

## **REMARKS**

### **Amendments**

Claims 1-23 and 38-39 were pending in the present application. Claims 1-16 are hereby canceled. Claims 17-23, 38, and 39 have been amended. Claims 40-46 are newly presented. After entry of this amendment, claims 17-23, 38, 39, and 40-46 remain pending in this application.

Support for the amendment to the claims may be found throughout the specification and claims, as originally filed. Support for a transgenic plant having an altered response to vernalization may be found at least at page 44 of the specification, as filed. Support for a transgenic plant having flowering without the need for vernalization may be found at least at page 44 of the specification, as filed.

### **Claim Rejections- 35 USC § 112- Indefiniteness**

Claim 23 was rejected under 35 USC § 112 as being indefinite. Specifically, the Examiner states that there is no antecedent basis for the recitation of “the nucleic acid.” Applicants have amended claim 23 to no longer recite “the nucleic acid.” Applicants respectfully request that the rejection of claim 23 be withdrawn.

### **Claim Rejections- 35 USC § 112- Written Description**

Claims 1-23 are rejected under 35 USC § 112 for failure to meet the written description requirement. To satisfy the written description requirement, a patent specification must describe the claimed invention in sufficient detail that one skilled in the art can reasonably conclude that the inventor had possession of the claimed invention. MPEP 2163. Citing *Eli Lilly* (119 F. 3d 1559 (Fed. Cir. 1997)), the Examiner stated that “[t]he Applicants do not disclose a correlation between function and structure, i.e., they do not include a functional limitation in claim 1 to go along with the 95% identity to SEQ ID NO: 75.” Office Action of June 15, 2007, at page 4, last paragraph.

Applicants respectfully assert that the Examiner misconstrues the requirements of 35 USC § 112 and the court of *Eli Lilly* in requiring a functional limitation.

However, in the interest of furthering prosecution, Applicants have canceled claims 1-16 and amended claims 17-23 to transgenic plants having an altered response to vernalization and to transgenic seeds thereof. New claims 40-44 are also directed to transgenic plants having an altered response to vernalization and the transgenic seeds thereof. Applicants submit that claims 17-23, as amended, meet the written description requirement and meet the Examiner's further requirement for a disclosure of a correlation between function and structure. Applicants respectfully request that the rejection of claims 1-23 under 35 USC § 112 for failure to meet the written description requirement be withdrawn.

Claim Rejections- 35 USC § 112- Enablement

Claims 1-23 are rejected under 35 USC § 112 for lack of enablement. "The test of enablement is whether one reasonably skilled in the art could make or use the invention from the disclosures in the patent coupled with information known in the art without undue experimentation." *United States v. Telectronics, Inc.*, 857 F.2d 778, 785 (Fed. Cir. 1988); *See also* MPEP 2164.01(a). The Examiner stated that "[t]he state-of-the-art is such that one of skill in the art cannot predict which nucleic acids that exhibit 95% identity to SEQ ID NO:75 will encoded(sic) a protein with the same activity as the protein encoded by SEQ ID NO:75." Office Action of June 15, 2007, at page 6, lines 7-9.

Applicants respectfully assert that the Examiner misconstrues the enablement requirement of 35 USC § 112 in requiring enablement of a non-claimed limitation (*i.e.*, same activity as the protein encoded by SEQ ID NO: 75).

However, in the interest of furthering prosecution, Applicants have canceled claims 1-16 and amended claims 17-23 to transgenic plants having an altered response to vernalization and to transgenic seeds thereof. New claims 40-44 are also directed to transgenic plants having an altered

response to vernalization and the transgenic seeds thereof. Applicants submit that claims 17-23, as amended, meet the enablement requirement. Applicants respectfully request that the rejection of claims 1-23 under 35 USC § 112 for failure to meet the enablement requirement be withdrawn.

Novelty and Nonobviousness of Claims and Allowable Claims

The Examiner indicated that claims 1-23 and 38-39 are deemed free of the prior art. Applicants thank the Examiner for the examination and indication of novelty and nonobviousness. Applicants request that the finding of novelty and nonobviousness be maintained with reference to amended claims 17-23, 38, and 39 and new claims 40-46.

The Examiner indicated that claims 38 and 39 are allowed. Claims 38 and 39 have been amended to independent form, including all the limitations of previous claim 1, from which they depended. Applicants respectfully request that the allowance of claim 38 and 39 be maintained.

Conclusion

In view of the above, each of the presently pending claims in this application is believed to be in immediate condition for allowance. Accordingly, the Examiner is respectfully requested to withdraw the outstanding objections and rejections of the claims and to pass this application to issue. If it is determined that a telephone conference would expedite the prosecution of this application, the Examiner is invited to telephone the undersigned at the number given below.

In the unlikely event that the transmittal form is separated from this document and the Patent Office determines that an extension and/or other relief is required, Applicants petition for any required relief including extensions of time and authorize the Commissioner to charge the cost of such petitions and/or other fees due in connection with the filing of this document to **Deposit Account No. 03-1952** referencing **514112000320**.

However, the Commissioner is not authorized to charge the cost of the issue fee to the Deposit Account.

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Respectfully submitted,

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